IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b)

Description of Case

Crl. Mise. Application No. 450 of 2006

Date of decision:-22-6-2006

Not approved for reporting

Date:- 22-6-2006 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL ,AT NAINITAL

Criminal Misc. Application No. 450 of 2006

Rakesh Kumar S/o Shri Fateh Chand
R/o House No. 557 Sector 6, Kashi Nagar
Model Town, Ambala City
P.S. Baldev Nagar
District Ambala, Haryana ….Applicant

Versus

1. State of Uttaranchal
2. Smt. Geetanjali W/o Shri Rakesh Kumar
D/o Shri Shyam Lal
Presently R/o 17 New Survey Road P.S. Dalanwala
District Dehradun …..Respondents

Sri A.V. Pundir learned counsel for the applicant.
Sri Amit Bhatt and Sri Rajeev Mohan learned A.G.A.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the chargesheet, proceedings and cognizance order dated 20.04.2006 passed by the Chief Judicial Magistrate, Dehradun in case No. 816/2006 State Vs. Rakesh Kumar & others under sections 498A, 323, 504, 506 IPC.

2. Brief facts of the case are that the respondent No.2-Smt. Geetanjali lodged an FIR against her husband-applicant and others under section 498A, 323, 504, 506 IPC and 3/4 D.P. Act with the allegations that the marriage was solemnized in between the applicant and respondent no.2 on 05.12.2004. After the marriage, the applicant and his family members were demanding dowry. When the said demand was not fulfilled, she was tortured. Then, she came to the house of her father. The police investigated the matter and

submitted the chargesheet against the applicant and others. Thereafter the Magistrate took cognizance against the applicant & others vide order dated 20.04.2006. Feeling aggrieved by this, the applicant preferred the present petition.

3. It was contended on behalf of the applicant that there is no prima facie case against the applicant. It was contended that the applicant had moved a petition before the District Judge, Ambala under section 9 of the Hindu Marriage Act for restitution of conjugal rights on 03.02.2006 and the same is pending. The present FIR has been filed as a counter blast of the petition filed by the applicant under section 9 of the Hindu Marriage Act. It was contended that the applicant has a business at Ambala and the respondent no. 2 was not happy at Ambala and she was insisting the applicant to close his business at Ambala and start afresh at Dehradun. When the applicant refused to shift his business the respondent no. 2 got annoyed with the applicant. Learned AGA refuted the contention and contended that the FIR as well as the evidence collected by the I.O. is sufficient to prove the allegations against the applicant under sections 498A, 323, 504, 506 IPC. Perusal of the complaint itself reveals that the dowry demand was made and the father of the respondent no. 2 had given a cash of Rs. 4 lakh on 7.11.2005. It has been held by the Hon'ble Sureme Court in **Banhisikha Roy Vs. Somnath Roy & others reported in 2006(1) SCC (Cri) p/625** that if the complaint itself shows the allegations of cruelty meted out to the wife in connection with the demand of dowry, then the prima facie under section 498-A IPC is made out against the accused. I could not understand as to how the present FIR would

be the counter blast of the petition filed under section 9 of the Hindu Marriage Act. However, the question whether it is a counter blast or not can only be considered at the time of trial. There is no prima facie material on record to hold that the present FIR is a counter blast of the said petition. I do not find any substance in the contention of the learned counsel for the applicants.

4. It is well settled position of law that the inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or compliant and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accusd or where there is an express legal bar engrafted in any provisions of the Cr.P.C. or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge. **{See R.P. Kapur Vs. State of Pujab A.I.R. 1960 SC 866, M. Krishnan Vs. Vijay Singh & another 2001(8) SCC 645, State of Haryana Vs. Bhajan Lal AIR 1992 SC**

604, 1992 SCC (Cri) 426 and Union of India Vs. Prakash P. Hinduja 2003 SCC (Cri) p/1314}.

5. Perusal of the present complaint itself reveals that the prima facie case is made out against the applicants. The power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rerest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002 (2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

6. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

7. In view of the above, the petition lacks merit and is dismissed. All the pending miscellaneous application(s) in the case, if any, shall stand disposed of accordingly.

(J.C.S.Rawat,J.)

Dated 22.06.2006

LSR